

# DOCKET FILE COPY

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC 93M-671

40126

In re Applications of

SCRIPPS HOWARD BROADCASTING COMPANY

For Renewal of License of Station WMAR-TV  
Baltimore, Maryland

and

FOUR JACKS BROADCASTING, INC.

For a Construction Permit for a New  
Television Facility on Channel 2  
at Baltimore, Maryland

MM DOCKET NO. 93-94

File No. BRCT-910603KX

File No. BPCT-910903KE

## ORDER

Issued: October 21, 1993

Released: October 22, 1993

This is a ruling on a motion styled "Statement For The Record" that was filed by Scripps Howard on October 05, 1993. An "Opposition To Statement For The Record" was filed by Four Jacks on October 14, 1993.<sup>1</sup> There has been no other pleading filed.

Scripps Howard seeks leave to expand the scope of cross-examination on media diversification to include evidence of "non-ownership media interests" in the form of "programming arrangements" which Four Jacks may have entered into. The substance of the argument is that the scope of cross-examination should extend to all arrangements of Four Jacks that are short of ownership and that retain control over programming. To establish the fact, Scripps Howard requests official notice of an "arrangement" wherein Station WPGH, Pittsburgh is controlled by the principals of Four Jacks and official notice of the fact that Station WPGH broadcasts "the great majority of broadcast time available to Station WPPT-TV, Pittsburgh." Scripps Howard also seeks to cross-examine Four Jacks on a proposed broadcasting interest that may be retained by the principals of Four Jacks in connection with the assignment of Station WNUV-TV, Baltimore. That assignment has been opposed by Scripps Howard.

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<sup>1</sup> The parties were instructed on procedures for responsive pleadings on this matter at the Admissions Session of October 05, 1993. See Tr.268-70.

The Commission has not yet definitively addressed the question of the impact of the multiple ownership rules on local marketing arrangements in television.<sup>2</sup> Therefore, the Presiding Judge has no authority to treat the broadcast arrangements as demerits for media diversification. Cf. Priscilla L. Schwier, et al, 4 F.C.C. Rcd 2659 (Comm'n 1989) (trial judge was correct to refuse to admit evidence of auxiliary power proposal in a television comparative case). In this case, the Presiding Judge has previously refused to apply new comparative criteria which is not shown to be criteria that was established by Commission rule or decision. See Memorandum Opinion And Order, FCC 93M-427, released June 29, 1993. The Commission has refused to ascribe a demerit to ownership of a company that produces national video programs that are not viewed in the state of license. See Ronald Sorenson, et al., 5 F.C.C. Rcd 3144, 3147 ( Review Bd 1990), modified on other grounds, 6 F.C.C. Rcd 1952 (Comm'n 1991), recon. denied, 6 F.C.C. Rcd 6901 (Comm'n 1991). The facts alleged by Scripps Howard with respect to the Pittsburgh station do not reflect a material distinction here that would distinguish this case from the Sorenson holding.<sup>3</sup>

Recall that Four Jacks has disclosed and placed in evidence the universe of proof showing the media ownership of the Four Jacks' principals. That evidence may be reasonably cross-examined through those principals, but not in such a manner as to constitute discovery. The Commission policy on cross-ownership allows for such synergies as time brokerage arrangements which are permissible since "a licensee entering into [one] must continue to maintain control over its programming." Policy Statement: Reexamination of the Commission's Cross-Interest Policy, 4 F.C.C. Rcd 2208, 214 (1989). Therefore, there is no showing of relevance to Commission standards of diversification or of media attribution to permit an expansion of cross-examination to Four Jacks' program arrangements.

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<sup>2</sup> Scripps Howard notes an existing Notice of Proposed Rulemaking on the subject. See Review of Regulations Governing Television Broadcasting, 7 F.C.C. Rcd 4111, 4115-16 (1992). But the outcome of that proceeding is too conjectural as authority for the relief requested by Scripps Howard.

<sup>3</sup> Argument made by Scripps Howard to cross-examine on "any existing and/or proposed programming arrangements whereby Four Jacks principals would own one station in a market while controlling a substantial amount of the programming of another station in the same market" is too speculative to allow. If it were to be permitted, Scripps Howard would first need to ascertain the extent and nature of Four Jacks' control over other programming and the proximity of that programming to the Baltimore market. Even if such speculative discovery were to be allowed, the time for discovery has long since past and discovery at the hearing which commences in two weeks will not be permitted.

Ruling

Accordingly, IT IS ORDERED that the relief sought by Scripps Howard in its Statement For The Record that was filed on October 05, 1993, IS DENIED.

IT IS FURTHER ORDERED that the scope of cross-examination of the principals of Four Jacks on diversification demerits IS LIMITED to the media ownership interests disclosed by Four Jacks in its Exhibit No.1, pp. 2-6.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Richard L. Sippel", written in a cursive style.

Richard L. Sippel  
Administrative Law Judge